IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1037 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

LALJI DHANJI PATEL

Appearance:

Mr.K.P.Raval, learned Addl.P.P. for appellant

MR MEHUL S SHAH for Respondent No. 1-3

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 11/09/2001

ORAL JUDGEMENT

The appellant - State of Gujarat has preferred this Appeal and challenged the order recorded by the learned Chief Judicial Magistrate, Rajkot in Summary Case No.381/87 dated 4.8.93 acquitting the accused of the

offences punishable under Sections 337, 323, 504 read with 114 of I.P.C.

Mr. K.P.Raval, learned Addl. P.P., while taking me through the paper book, has taken me through the order passed by the learned Magistrate and the Rojnama of the case and vehemently urged that the learned Magistrate was not right while disposing of the case on the ground that the prosecution has failed to produce witnesses before the Court by observing that inspite of the issuance of summons to the witnesses, the police authority has not taken any care to keep the witnesses present before the Court. The complaint was filed in respect of the incident, which has occurred on 14.1.87. The complainant and the accused were residing in a rented house and there was some altercation about fetching water and the accused No.1 had thrown a stone on the complainant and the complainant had sustained injuries and accused Nos.2 and 3 had abused the wife of the complainant and also gave fist and kick blows. The Summary case was accordingly placed before the Court and the learned Magistrate has disposed of the said case on the ground that the prosecution has failed to produce any witness to prove the case against the accused, inspite of the fact that though the summons were issued, they were not served on the witnesses and on all the dates, the accused had to appear before the court. Mr. Raval, learned Addl. P.P. has taken me through the Rojnama of the case wherein he pointed out that when the matter was before the learned Magistrate on 21.4.93, on that day the learned Magistrate has recorded the plea of the accused and the summons were ordered to be issued on the witnesses, which was made returnable on 12.5.93. While taking me through the Rojnama of the subsequent dates, it is submitted by Mr. Raval that even on a subsequent date it seems that the accused has prayed for seeking exemption and between 21.4.93 upto 7.7.93 it is found that the accused had submitted application for seeking exemption, which was granted. On 7.7.93 accused Nos.2 and 3 were present and an application for exemption was sought by accused No.1 and the matter was adjourned further for evidence on 4.8.93. On 4.8.93 the learned P.P. has given an Application Exh.26 highlighting that the plea of the accused was recorded by the court on 21.4.93 and thereafter summons were not issued and accordingly prayed for an adjournment. The learned Magistrate while dealing with the said application has observed that the summons were sent to the Police and there is no substance in the contention that the summons were returned and the police is responsible and accordingly the learned Magistrate has acquitted the accused as per the order dated 4.8.93 and

highlighted in detail that inspite of sending summons, the police has not taken any steps to serve the same since 1987. It is further found from the Rojnama of 27.2.92 that as per the order passed by the learned District Judge the said case was transferred in accordance with law to the learned 6th Joint Civil Judge (S.D.) Rajkot and even on that day the court has ordered for issuance of summons to the witnesses, which was made returnable on 29.4.92. In my view after 8 years this Court is not required to interfere with such order and when the learned Magistrate has, after recording the plea of the accused, kept the matter for evidence, the prosecution has failed to bring the witnesses before the Court. Accordingly this Appeal is dismissed.

(D.K.Trivedi,J)